

No. 1-10-3254

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 13091
)	
ANDREW PRESNAK,)	Honorable
)	Douglas J. Simpson,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Steele and Justice Salone concurred in the judgment.

ORDER

¶ 1 *Held:* Judgment entered on defendant's conviction of aggravated driving under the influence of alcohol affirmed over his challenge to the sufficiency of the State's evidence proving that his intoxicated driving proximately caused the victims' great bodily harm and death.

¶ 2 Following a bench trial, the trial court found the defendant, Andrew Presnak, guilty of two counts of aggravated driving under the influence of alcohol (ADUI). On appeal, Presnak contends that (1) the State failed to prove him guilty of ADUI beyond a reasonable doubt where it did not establish a causal connection between the DUI violation and the victims' injuries, and (2) the trial

court based its decision on unreasonable inferences from the evidence. We find that the record supports the trial court's inferences, and the State proved that Presnak's impairment, due to alcohol, caused the injuries. Accordingly, we affirm the trial court's judgment.

¶ 3

BACKGROUND

¶ 4 On June 22, 2008, as Presnak drove his truck northbound on Halsted Street through the intersection with Holbrook Road, in Glenwood, Illinois (the intersection), the truck struck pedestrians Nathaniel Lopez and Laura Dannowitz (collectively, the victims), killing Lopez and causing great bodily harm to Dannowitz. A blood test performed shortly after the accident established that Presnak had a blood alcohol level (BAC) of .143. Prosecutors charged Presnak with two counts of ADUI.

¶ 5 At the trial, Dannowitz testified that she vaguely remembered Saturday, June 21, 2008. During the late afternoon hours of that day, she and her friends were celebrating the life of a recently deceased friend at another friend's house about two blocks away from the intersection. Later that evening, when people began to leave, Lopez invited her and some others to his house which was about two houses away. Both Lopez and Dannowitz had been drinking that day, and in the early morning hours of June 22, 2008, they decided to walk to the Speedway gas station on the corner of the intersection. Dannowitz did not recall reaching Holbrook Road or crossing Halsted Street. On cross-examination, Dannowitz acknowledged that she drank so much alcohol on the day in question that she could not drive.

¶ 6 The next thing Dannowitz remembered was waking up at St. James-Olympia Fields hospital and feeling a lot of pain. She also became aware that she was hooked up to intravenous tubes (IVs) and that her leg was immobilized. She was released from the hospital on July 1, 2008, and still suffers the effects of the accident, such as not being able to sit or stand for long periods of time and having constant headaches. She wears a leg brace to keep her stable when she walks.

¶ 7 Jeremiah Bryant testified that about 1:20 a.m. on June 22, 2008, he was driving southbound on Halsted Street in the direction of Holbrook Road at about 35 miles per hour when he observed the victims walking eastbound across Halsted towards the concrete median which divides Halsted Street into two lanes on both sides. When he drove through the intersection, the traffic light began turning from green to yellow, and the victims were standing on the median, which was about three inches off the ground and had nothing on top of it. Bryant testified that the lighting conditions were "normal" at the time, with light coming from a Speedway gas station and traffic lights.

¶ 8 Bryant then saw a black truck heading northbound about five miles per hour faster than he was driving on the other side of Halsted Street. He heard a crash. Bryant looked to his left and saw debris in the air, then made a U-turn and pulled into the Speedway gas station. He got out of his car, walked into the middle of Holbrook Road, and saw the victims on Halsted Street. Lopez was barely moving, and Dannowitz lay motionless in a "cramped position, twisted" on the corner north of Holbrook Road. Bryant then saw Presnak get out of the black truck, which was parked about 30 feet north of Dannowitz.

¶ 9 On cross-examination, Bryant acknowledged that the handwritten statement he gave to investigators did not indicate that the light at the intersection was turning yellow. He stated that he first noticed the victims when he was about four car lengths from the intersection, or about 15 to 20 seconds before driving through the light. He also noticed that they were walking east towards the median at a fast pace, and that he did not need to apply his brakes because they made it to the median before he reached them. He further stated that Presnak's truck was in the outermost lane of Halsted Street closest to the Speedway gas station.

¶ 10 Latrece Jones testified that about 1:20 a.m. on June 22, 2008, she was a passenger in Bryant's car traveling southbound on Halsted Street and observed the victims standing on the concrete median as they drove through the intersection. She subsequently saw a black pick-up truck traveling

northbound on Halsted Street a little faster than they were going, then heard a loud crash about 10 seconds later and turned around and saw debris flying in the air. At that point, Bryant made a U-turn and pulled into the Speedway parking lot. Jones called 911 and approached Lopez on the ground near the crosswalk on Halsted Street as he reached his hand up for help. She then turned and saw Dannowitz lying in a ditch near the curb on the opposite side of the street. She was not moving. Jones testified that the area was "pretty well lit" because of the Speedway, Walmart, and streetlights.

¶ 11 On cross-examination, Jones stated that she initially noticed the victims from about a block and a half away as they walked casually to the east side of the street. When she turned and saw the debris in the air, she noticed that the traffic light was red.

¶ 12 Glenwood police officer Daniel Fisher testified that about 1:20 a.m. on June 22, 2008, he responded to a call of a pedestrian struck by a vehicle at the intersection, a "[v]ery well lit" area because of the Speedway on the southeast corner, the Walmart on the northeast corner, and several streetlights. When he arrived, Officer Fisher observed paramedics treating the two victims in the street, then approached Presnak and asked him what had happened. Presnak responded that he had hit two pedestrians and called 911, and he was wringing his hands and saying that he was "upset." As Officer Fisher moved closer, he smelled a very strong odor of alcohol on Presnak's breath, and noticed that Presnak was having trouble standing and had glassy, bloodshot eyes. After Presnak submitted to a portable breath test, and failed field sobriety tests such as the horizontal gaze nystagmus test, the one-leg stand test, and the walk-and-turn test, Officer Fisher arrested him for driving under the influence and transported him to South Suburban Hospital for a blood draw. On cross-examination, Officer Fisher stated that he had not observed any skid marks near Presnak's truck.

¶ 13 Glenwood detective Tom Morache testified that sometime after 4 a.m. on June 22, 2008, he met with Presnak, who eventually gave a statement in which he stated that earlier in the night, he and his friend, Chris Riviera, walked to the woods where they "hung out" and had a few beers, and defendant eventually dropped Chris off at his house in Crown Point, Indiana. As defendant was driving home to Glenwood, he was traveling northbound on Halsted Street at the speed limit and approaching a green light at Holbrook Road when he hit two people who "all of a sudden" walked in front of his truck. He stopped "right away," got out of his truck, and walked over to Dannowitz and asked if she was okay, but she did not respond. He then went to Lopez and asked him if he was okay, and he said, "no." Presnak called 911 and was disconnected, then called back and explained what had happened. Presnak stated that he "never saw the two people as they were come up [*sic*] to this intersection at Holbrook Road and don't know where they came from."

¶ 14 The parties stipulated, in relevant part, that both Dannowitz and Lopez suffered injuries which constituted great bodily harm, and that Lopez died at 11:23 p.m. on June 24, 2008. The parties further stipulated that Dannowitz had a .208 BAC, that Lopez had a .186 BAC.

¶ 15 For the defense, Daniel Asselborn testified that about 1:26 a.m. on June 22, 2008, he was working for Bud's Ambulance Service and responded to a call at the intersection where he began patient care for Lopez on the street. Paramedics moved Lopez into the ambulance where better lighting helped the medical personnel start IVs and secure any fractures. Asselborn testified that the lighting conditions on the scene were "[p]oor," but clarified on cross-examination that the lighting was poor only for performing medical procedures.

¶ 16 Rick Coulom, a member of the Suburban Accident Investigation Team for the South Chicago Heights Police Department, testified as an expert in accident reconstruction. Coulom testified that about 1:15 a.m. on June 22, 2008, he responded to a call of a traffic accident at the intersection and observed a debris field north of the white stop line on Halsted Street, two pools of blood where the

victims came to rest, and the black truck that hit them about 196 feet north of the white stop line for northbound traffic on Halsted Street and off the roadway. The truck was damaged on the right front side, right front fender, and windshield, which indicated that the right corner of the vehicle struck the victims. The posted speed limit at the intersection was 45 miles per hour, and Coulom was able to determine through a crash reconstruction computer program that the truck had been traveling between 31 and 45 miles per hour. Coulom could not definitively say how fast the victims were walking at the time of the accident, and could only guess based on his investigation that they were walking eastward and were struck on their right sides.

¶ 17 On cross-examination, Coulom stated that because there was damage at only one location on the truck, it was his opinion that the victims had been walking side-by-side when they were hit. He also stated that Presnak was in the lane nearest the southeast corner of the intersection where the Speedway was located, and that the victims were hit on the Speedway-side of Presnak's truck. He further acknowledged that there were no skid marks, pre-impact or otherwise. On redirect, Coulom testified that pre-impact skid marks would indicate that the driver was able to observe the pedestrians in his path and brake his car.

¶ 18 Michael Lucia, an emergency medical technician, testified that about 1:20 a.m. on June 22, 2008, he responded to a call at the intersection. He found Presnak alert and of a mental status to grant a refusal of treatment. Presnak answered all of his questions and appeared nervous.

¶ 19 Counsel subsequently played Presnak's 911 call for the court. Presnak repeatedly said in the call that he had not seen the victims, as they "walked right in front of [him]" and "ran right in front of [his] car." He also acknowledged the victims' severe injuries, stating "they're definitely not okay" and that "[o]ne of them is not responsive, and the other one is just making noise."

¶ 20 The court found Presnak guilty on both counts of ADUI, noting, *inter alia*, that alcohol impaired Presnak's ability to drive, that he "certainly had enough time to see these folks cross those

numerous lanes of traffic," and that the lack of skid marks or an attempt to evade was significant. The trial court merged the less serious offense (great bodily harm) into the more serious count (death of another), and sentenced Presnak to 90 days' incarceration and 30 months' probation.

¶ 21

ANALYSIS

¶ 22 In this appeal from that judgment, Presnak contends that the State failed to prove him guilty of ADUI beyond a reasonable doubt where it did not establish that his DUI violation proximately caused Dannowitz's injuries and Lopez's death. He claims that the State failed: (1) to establish how his vehicle made contact with the victims or that he was a bad driver; (2) to disprove his trial theory that "the pedestrians may well have initiated contact with [defendant's] vehicle suggest[ing] their exclusive criminal involvement"; (3) to establish certain "salient, common sense, mechanical, scientific, necessary facts"; and (4) to establish that his conduct proximately caused the victims' injuries.

¶ 23 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the question for the reviewing court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Jordan*, 218 Ill. 2d 255, 269 (2006). It is the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 24 To sustain the ADUI convictions, the State was required to prove that Presnak was driving with a .08 or greater BAC and involved in a motor vehicle accident which resulted in great bodily

harm or death to others, and that his driving while intoxicated proximately caused the great bodily harm or death. 625 ILCS 5/11-501(d)(1)(C), (d)(1)(F) (West 2008). Presnak concedes that the State proved all the elements other than proximate cause. An action is a "proximate cause" of bodily harm or death if, in the natural or probable sequence of events, the action produced the great bodily harm or death of another person. Illinois Pattern Jury Instructions, Criminal, No. 23.28A (4th ed. 2011) (hereinafter, IPI Criminal 4th No. 23.28A). It need not be the only cause, nor the last or nearest cause, but rather, the action is sufficient if it, in combination with some other event, causes the great bodily harm or death of another person. IPI Criminal 4th No. 23.28A.

¶ 25 Viewed in the light most favorable to the prosecution, the record shows that in the early morning hours of June 22, 2008, Lopez and Dannowitz decided to walk to the Speedway gas station on the southeast corner of Halsted Street and Holbrook Road, in Glenwood, an intersection illuminated well by streetlights and light from the Speedway gas station and nearby Walmart. When they reached the intersection, they crossed the southbound lanes of Halsted Street from west to east as Bryant was driving toward them on a green light, and made it to the median divider before he needed to apply his brakes. Bryant was able to observe them 15 to 20 seconds before driving through the intersection, and Jones, his passenger, was able to see them from about a block and a half away. Meanwhile, Presnak was driving northbound in the eastern-most lane of Halsted Street. Because the victims crossed the southbound lanes first, Presnak had more time than Bryant to see the victims as they crossed the intersection. The light for Halsted traffic changed from green to red before the right front of Presnak's truck hit Dannowitz and Lopez, leaving no skid marks. Because the right front corner of Presnak's truck struck the victims as they crossed the right lane of Halsted, the evidence indicates that Presnak could have avoided the accident if he had stopped for the red light or if he had veered even slightly toward the center lane of Halsted before his truck hit the victims. Presnak subsequently told police that the two victims had "all of a sudden" walked in front

of his truck. However, when speaking with police after the accident, Presnak had trouble standing, failed field sobriety tests, and was found to have a .143 BAC. This evidence supports the finding that Presnak's impairment, due to alcohol, prevented him from noticing and responding appropriately when the victims crossed Halsted in front of his truck.

¶ 26 In reaching that conclusion, we find *People v. Merritt*, 343 Ill. App. 3d 442, 448 (2003) similar to the case at bar. In that case, the defendant struck and killed a jogger with her van as he was crossing the street wearing headphones. *Merritt*, 343 Ill. App. 3d at 443-44. She subsequently had difficulty performing a variety of field sobriety tests and was found to have a .12 BAC. *Merritt*, 343 Ill. App. 3d at 444-45. This court affirmed her ADUI conviction, noting that the State established that other drivers had been able to observe the victim despite the dark lighting conditions, and that a driver who had the same view as the defendant was able to see the victim step into the street and slow her vehicle in response. *Merritt*, 343 Ill. App. 3d at 448. The court held that the circumstantial evidence proved the "defendant's alcohol consumption impaired her ability to observe, to promptly and accurately assess, to make decisions, and to take prompt action." *Merritt*, 343 Ill. App. 3d at 447. Furthermore, the court noted that the defendant's intoxication only needed to be a proximate cause of the victim's injuries, not the sole and immediate cause, and thus reversal of her conviction was not warranted merely because the victim's conduct was also a proximate cause of his injuries. *Merritt*, 343 Ill. App. 3d at 448.

¶ 27 Here, likewise, the record shows that on the night of the accident, Presnak was driving his truck with a BAC exceeding .08 when he hit Dannowitz and Lopez, causing great bodily harm to the former and death to the latter. Presnak, like the defendant in *Merritt*, failed field sobriety tests after the accident, supporting the inference that alcohol impaired his physical and mental abilities. See *Merritt*, 343 Ill. App. 3d at 448. Bryant, driving in the southbound lanes of Halsted Street, saw the victims from a distance and had ample time to react to them. Presnak had even more time than

Bryant to observe the victims' crossing because he was driving in the last of the four lanes that they were crossing. Despite his opportunity to see the victims, Presnak neither hit his brakes hard nor swerved out of the right lane to avoid the victims. Moreover, Bryant's testimony indicates that the light must have changed to red before Presnak entered the intersection. Under these circumstances, we find that the State sufficiently proved that Presnak's alcohol consumption impaired his ability to observe and respond to driving conditions, and that the alcohol impairment proximately caused him to injure Dannowitz and Lopez.

¶ 28 In so finding, we have considered *Merritt, People v. Johnson*, 392 Ill. App. 3d 127 (2009), and *People v. Winningham*, 391 Ill. App. 3d 476 (2009), cited by defendant, and find that they do not require the State to prove the vague proposition that defendant was a "bad driver," as he claims. We also reject defendant's claims that the State failed to present certain additional evidence beyond that required by the ADUI statute. Contrary to these claims, the State was only required to establish the precise elements of the ADUI offense, and, as noted above, it did so.

¶ 29 Presnak next claims that the trial court drew unreasonable inferences from the record. In particular, Presnak takes issue with the trial court's reference to his statement to police that he did not see the victims before hitting them as "somewhat different" than his 911 call in which he said that the victims ran in front of him, and that latter statement as being "in contradiction to" the eyewitness testimony that the victims were standing on the median when they saw them. We note, however, that the trial court, as the trier of fact, could reasonably find that Presnak's 911 call stating that the victims ran in front of him contradicted eyewitness testimony that the victims had stopped at the median where that testimony suggests that the victims were not trying to cross the street by running. *Sutherland*, 223 Ill. 2d at 242. We find nothing so unreasonable about the court's findings as to warrant a new trial. *Smith*, 185 Ill. 2d at 542.

¶ 30 Lastly, we note that Presnak argues in this appeal that the victims, themselves, caused their injuries, stating that "[t]he record established their intoxicated, unlawful and carefree actions, yet failed to show how [defendant] trumped, let alone equaled what they self-created." However, even if the victims were, indeed, partly responsible for the accident, the prosecution sufficiently established that defendant's intoxicated driving proximately caused the great bodily harm and death under the ADUI statute. See IPI Criminal 4th No. 23.28A.

¶ 31 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 32 Affirmed.